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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.                       | CONFIRMATION NO. |
|--|-------------|----------------------|---|------------------|
| 10/601,796   | 06/23/2003  | Morris Samelson      | P-5435(DIV1)                              | 7988             |
| 7590 03/07/2006  |             |                      |   |                  |
| GUNN & LEE, P.C.,<br>700 N. ST. MARY'S STREET, STE.1500<br>SAN ANTONIO, TX 78205 |             |                      | EXAMINER<br>CHANNAVAJJALA, LAKSHMI SARADA |                  |
|  |             |                      | ART UNIT                                  | PAPER NUMBER     |

1615

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                          |                     |  |
|------------------------------|--------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>   | <b>Applicant(s)</b> |  |
|                              | 10/601,796               | SAMELSON ET AL.     |  |
|                              | <b>Examiner</b>          | <b>Art Unit</b>     |  |
|                              | Lakshmi S. Channavajjala | 1615                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-19-06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt of response and IDS dated 1-19-06 is acknowledged.

Claim 1-18 are pending in the instant application.

The following rejection of record has been maintained:

#### ***Claim Rejections - 35 USC § 103***

1. Claims 1-5, 7-10, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0211062 to Laden et al (Laden) in view of KR 149428 (KR).

Laden teaches anhydrous skin cleansers comprising emollient oils (0021), emulsifying agents (0030-0032), substantially crystalline abrasive materials (0033-0036) and other additives such as tocopherol, fragrances. Laden teaches that the that the crystalline abrasive material is used at a concentration of 1-60% (0014), to provide sufficient abrasive effect in the removal of soils, without irritating or scratching of the skin. Examples 1 and 8 particularly recite Dead Sea salt as an abrasive. While Laden suggests employing abrasives at a concentration of 1-60%, the reference fails to specifically state that the Dead Sea salts should constitute "at least 50% of the weight of the composition", as claimed.

KR teaches a cosmetic composition comprising large quantities of salt (15%-85%) such as bay salt, Dead Sea salt or bamboo salt, having a particle size of 0.1mm to 5.00 mm, oil, surfactant and a polyol (abstract). KR teaches that by employing a high amount of salt enhances the massage and clears skin by moisturization-blood flow function. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant to use 15% to 85% of Dead Sea salt at with an expectation to

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obtain skin scrubbing as well as enhanced moisturization and blood flow. Further, the particle size of salts taught by KR includes the claimed sizes (instant claims 16 and 18).

2. Claims 6,11-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0211062 to Laden et al (Laden) in view of KR 149428 (KR) as applied to claims 1-10, 16 and 18 above, and further in view of 5,997,889 to Durr et al (Durr).

Laden and KR fail to teach the claimed essential oils of the instant claims. However, Laden teach addition of fragrance and tocopherol in the composition. Both Laden and KR teach maintaining skin moisture during scrubbing.

Durr teaches '889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin E oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of Laden containing high percentages of Dead sea salts (KR) because '889 teaches the ingredients for moisturizing and providing relief to psoriatic or itchy skin conditions. Therefore, a skilled artisan would have expected to achieve a more effective composition for treating

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psoriasis with a composition containing Dead Sea salts, emollients such as jojoba oils etc.

The following new rejection is applied to the instant claims:

### ***Claim Objections***

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim. Instant claims 3-10 and 13-15, which recite a different carrier medium, are improperly dependent on the preceding claim, whereas the generic limitation "all-natural carrier medium" is present in claim 3. It is suggested to applicants to correct the instant claims to depend from claim 3. Similarly, claims 13-15 recite a specific essential oil and should be dependent upon claim 12, instead of the preceding claims.

### ***Claim Rejections - 35 USC § 112***

Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claims recite the new limitation "anhydrous", which constitute new matter that is not supported by the instant specification. A careful review of the instant disclosure does not reveal any support for the claimed anhydrous composition and thus does not comply with the written description requirement.

***Response to Arguments***

Applicant's arguments filed 1-19-06 have been fully considered but they are not persuasive.

Claims 1-5, 7-10, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0211062 to Laden et al (Laden) in view of KR 149428 (KR).

Applicants argue that Laden discloses using dead Sea salts as one of many crystalline abrasive materials, does not teach processed salts, discloses concentration less than 50% on a weight basis (examples 1 and 8), fails to teach the granularity of the salts and also indicates that salts are a mixture of crystalline and powder mineral salts. Applicants also argue that instant specification discloses the granularity of the Dead Sea salts as opposed to commercially available granularity and that the instant "processed" Dead Sea salts contrast with the commercially available salts. However, the arguments are not persuasive because Laden teaches cosmetic compositions comprising Dead Sea salts as abrasive materials. With respect to the claimed amounts and percentages of salts, KR clearly teaches Dead Sea Salts and in particular granularity that encompasses the claimed granularity. Admittedly instant specification teaches "processed" Dead Sea salts that have ultra fine granularity. However, KR teaches granularity of Dead Sea salts in the claimed range and hence meets the claimed requirement. Applicants argue that Laden teaches silicone oil, which does not read on the claimed all-natural carrier medium. However, instant claims recites "comprising", which is open and allows for the presence of silicone oil of Laden. Further, the claimed oils are recognized by the prior art (Laden) and employing these oils is not

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novel in cosmetic compositions. Instant claims 13-15 are objected (see above) for their improper dependency and the argument that all the oils are present in the claimed carrier medium is not persuasive.

With respect to the teachings of KR, it is argued that while the reference discloses particle size in the range of 0.01 mm-5.0 mm, the Dead Sea salts would necessarily be in the range of 90% less than 1.7 mm or greater than 90% between 1.7 mm to 4.0 mm, because those are the two standard grades commercially available, as in instant specification. However, KR nowhere states that only commercially available Dead Sea salt is used in the invention and hence the argument is not persuasive. The burden to show that the particle sizes of KR are not in the claimed size range is shifted to applicants because KR does teach a range, which admittedly includes the claimed range. Applicants argue that KR fails to teach the claimed oils in combination. However, the claimed oils are taught by Laden in cosmetic scrub composition (examples), which is the same effect (scrubbing) that KR also teaches. Hence it is not necessary that each of the cited reference disclose each and every claim limitation in an obviousness rejection.

Applicants' argument that the teachings of Laden and KR are not analogous is not persuasive because both the teachings are directed to skin scrub compositions and both employ abrasive minerals and salts, including those claimed, for scrubbing effect. Moreover, the cited references are in the field of applicants' endeavor and hence also analogous to the instant invention. Applicants' arguments regarding the solubility of

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polyol (of KR) is not persuasive the use of oils is taught by Laden, who teaches oils such as soya oil, jojoba, coconut oil etc. Accordingly, adding the Dead Sea salts (in the amounts and particle size) of KR in the compositions of Laden would result in a medium, in which the separation of Dead Sea salts does not occur, absent evidence to the contrary. Applicants' argument that KR prefers bamboo salt (as in examples) and not claimed salts is not persuasive because the prior art teachings are not limited to examples and should be considered as a whole. The motivation to add the Dead Sea salts of KR into the composition Laden comes from the teaching of KR that Dead Sea salts (or bamboo or bay salts), in the amounts and particle sizes taught, in an emulsion results in storage stable, efficient in massaging skin by improving blood flow and also scrubbing.

Claims 6,11-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0211062 to Laden et al (Laden) in view of KR 149428 (KR) as applied to claims 1-10, 16 and 18 above, and further in view of 5,997,889 to Durr et al (Durr).

Applicants argue that both Laden and KR fail to teach claimed oils and the claimed essential oil blend. It is argued that while Laden teaches anhydrous gel, KR teaches polyol-based (water-like), whereas Durr teaches that water may be used. It is argued that the references are not analogous. However, applicants themselves admitted that Durr teaches water may be used and not necessary that water is used. Further, KR recognizes the requirement to stabilize the salts (Dead Sea, bamboo, bay) in oil-in-polyol emulsion. Laden also teaches preparing oil compositions containing Dead



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Sea salts. Therefore, choosing a proper emulsion preparation so as to achieve a stable (upon storage) composition would have been obvious for one of an ordinary skill in the art. The motivation to add the essential oil blend of Durr in the composition of Laden containing the salts (% and particle sizes) of KR comes from the teaching of Durr that these essential oils for immediate relief from skin discomfort and provide moisturization.

Unexpected results:

Applicants argue that the declaration does reveal unexpected results and is commensurate with the scope of the claims. It is argued that the unexpected results reveal that all of the Dead Sea salts remain in suspension, without separation. Applicants also argue that examiner gives no basis for the observation of “the feel and ability to remain in suspension is a function of soybean oil and beeswax”, even though the percentages of soybean and beeswax in experiments 5 and 4 are 9% and 3% respectively. In response to this, even though each of the experiments 6 through 10 employ 51% of Dead Sea salts, the final result of skin feel, appearance, ability to remain suspension is not the same (as seen from the results section of the experiments). Experiments 6 through 10 mainly differ from each other in the amounts of soybean oil and beeswax, whereas the amounts of other oils and waxes remain more or less same in each of the experiments. Accordingly, any difference in the end result is only a function of the amounts of soybean oil and beeswax. Applicants themselves admit that experiment 10 (with same amount of Dead Sea salts as in experiments 6-9, but with 9% soy bean oil and 3% beeswax) is “final and best for production”. With respect to the

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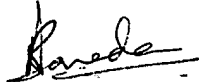
experiments 5 and 4, even though the amounts of Dead Sea salts are high, the end results show that the salts remain in suspension but with slight separation (experiment 4, which is 50% salts and is in the claimed range) or remain in suspension, but unacceptable feel and overly thick (example 5, 55% salts, still within the claimed range). Thus, with respect to claims 4 and 5, even a claimed amount of salts do not remain in suspension without separation or if they do so, the suspension is too thick to result in an unacceptable feel. Thus, it is the position of the examiner that the results shown are not commensurate with the scope of the claims because instant claim 1 recites at least 50% of the Dead sea salts and while the results show that Dead sea salts at a concentration of 50% and 51% show an acceptable feel, excellent scent, a concentration of 55% (which still meets the claimed "at least 50%") however shows that the immediate effect on skin is not as intended, although the feel is acceptable, and also the suspension obtained is over thick with too much salts to feel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615

2/27/2006